MHA

AN ASSOCIATION OF MONTANA HEALTH CARE PROVIDERS

PUBLIC HEALTH, WELFARE & SAFETY
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Bill No. SB 26

Testimony on SB 26
Before the senate Public Health Committee

By John W. Flink, Vice President, MHA
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MHA supports SB 26 provided the amendments described by Sen. Murphy are added to the bill.

In explaining our position, let me begin with a few words about the physician credentialing process. Credentialing is the term used to describe the process a hospital goes through to make sure physicians who seek the privilege of practicing in the hospital are adequately trained to perform the procedures they would like to perform in the hospital.

Physicians who would like to practice in a hospital apply for the privilege of doing so. Their application is considered by a committee of the medical staff, which evaluates their education, training, experience – and makes a recommendation about whether a physician should be granted privileges.

The hospital's governing body has the ultimate responsibility under federal Medicare rules for granting privileges – and they act on the medical staff committee's recommendations.

Credentialing became an issue in the 2007 session when a handful of physicians raised concerns that hospitals might discriminate against them because they also had ownership interests in other health care ventures.

SB 312 approved in 2007 prohibited hospitals from using criteria other than those related to their education, training and clinical qualifications in granting privileges.

SB 312 also clarified another very important public policy issue. As I stated above, under Medicare rules, a hospital's governing board has the ultimate responsibility for the operation of a non-profit hospital. This board is charged with making sure the community assets are used appropriately.

Our goal in all of the discussions about credentialing has been to protect the board's ability to exercise this fiduciary responsibility. SB 312 preserved that right, and, in our view, SB 26 as amended would do so.

Why is this important? In today's health care environment, physicians have invested in a variety of outside ventures – such as imaging centers, ambulatory surgery centers and specialty hospitals – that may compete with the non-profit community hospital.

Physicians have every right to make these investments – and hospitals are not saying they shouldn't do so.

However, a physician who owns an ambulatory surgery center and also has privileges at the hospital has a conflict of interest due to his ownership of the ASC. It may or may not present a problem for the hospital, but the hospital has to be able to manage situations in which this conflict of interest may be important.

It's important to note that a conflict of interest doesn't preclude a physician from being granted privileges to serve on the hospital's medical staff. Nor does it necessarily prevent a physician from serving in a medical staff leadership position or on the facility's governing board.

Again, with the amendments, we are confident that hospital boards will be able to fulfill their fiduciary responsibility.

Finally, let me make a few comments about the amendments.

The first major amendment is on page two. The MMA felt that the language in the draft bill inhibited the ability of the medical staff to elect their own leadership and asked that it be dropped. We agreed.

The second major amendment is at the bottom of page two and relates to the definition of a conflict of interest. MHA asked that the 5 percent threshold for a conflict of interest be deleted. The MMA agreed to that request.

A conflict of interest is a conflict of interest – regardless of the size of the ownership stake. For example, under federal rules governing disclosure of physician ownership in a specialty hospital, the amount of the investment is irrelevant – any investment must be disclosed.

The third major amendment is on page – in the section related to on-call requirements. In MHA's view, requiring a supermajority of the medical staff to approve call requirements is simply unworkable.

The real issue appears to be concern among physicians that hospitals would use call policies to drive physicians out of business. MHA and MMA agreed that this would constitute a restraint of trade – hence the reference to the unfair trade practices section of the statute.